

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MLC INTELLECTUAL PROPERTY, LLC,

Plaintiff,

v.

MICRON TECHNOLOGY, INC.,

Defendant.

Case No. [14-cv-03657-SI](#)

**ORDER DENYING MLC'S THIRD
DAUBERT MOTION TO EXCLUDE
TESTIMONY OF JOSEPH
MCALEXANDER**

Re: Dkt. No. 425

On June 6, 2019, the Court held a hearing on numerous pretrial motions. For the reasons set forth below, the Court DENIES MLC's third *Daubert* motion to exclude Mr. McAlexander's testimony, without prejudice to specific objections at trial.

MLC seeks to preclude McAlexander from offering his rebuttal opinion that "the technological value of the '571 Patent is substantially less than half the value of the remaining portfolio." McAlexander Rebuttal Expert Report ¶ 383 (Dkt. No. 425-2).¹ MLC asserts that this opinion should be excluded "[b]ecause Mr. McAlexander neither read the claims of these patents, nor analyzed their scope, he simply is not [in] a position to evaluate the worth of the '571 Patent relative to the rest of patents in MLC's portfolio." Mot. at 1. MLC contrasts McAlexander's valuation opinion with that of MLC's expert, Dr. Lee, who MLC claims "considered the claims

¹ MLC's technical expert, Dr. Lee, has opined that the "vast majority" of the technical value of MLC's U.S. patent portfolio is attributable to the '571 patent. Lee Opening Report ¶ 236 (Dkt. No. 370-8). MLC's damages expert, Mr. Milani, relies in part on Dr. Lee's opinion regarding the technical value of the '571 patent in support of his opinion that "at least 50% (and potentially much more) of the licensing value of the MLCIP Patent Portfolio is attributable to the technology of the '571 Patent." Milani Report at 66 (Dkt. No. 422-4).

from each of these patents and compared them with the claims of '571 Patent . . . [and] [o]nly after considering what each patent covered . . . [made] an assessment of the '571 Patent's value relative to the rest of the portfolio." *Id.* at 2-3. While MLC concedes that Mr. McAlexander "may be in a position to critique Dr. Lee's methodology," MLC contends that "Mr. McAlexander simply did not perform the work expected of an expert to apportion the value of '571 Patent within MLC's portfolio." *Id.* at 3.

In response, Micron contends that "Mr. McAlexander's rebuttal report spends eleven paragraphs explaining the flaws in Dr. Lee's analysis, which leads to the common sense and conservative opinion that the 'technological value of the '571 Patent is substantially less than half of the value of the remaining portfolio.'" Opp'n at 1 (Dkt. No. 487). Micron refers to paragraphs 373-383² of the McAlexander Rebuttal Report to demonstrate that Mr. McAlexander considered the other patents in MLC's portfolio. Micron also contends that Mr. McAlexander's opinion is proper insofar as it is a critique of Dr. Lee's valuation opinion. Micron asserts "Mr. McAlexander's ultimate conclusion that the '571 Patent is substantially less than half the value of the remaining portfolio is grounded in Mr. McAlexander's analysis showing that Dr. Lee fails to show the '571 Patent is any more valuable than any other MLC patent." *Id.* at 2.

The Court concludes that if Dr. Lee is permitted to testify about the technical value of the '571 patent,³ McAlexander will also be permitted to testify about his opinions critiquing and rebutting Dr. Lee's valuation methodology, including his opinion about the relative value of the '571 patent. MLC's objection that McAlexander did not review all 30 of MLC's U.S. patents to reach his conclusion about the value of the '571 patent goes to the weight and not the admissibility of his rebuttal opinion. Even though McAlexander does not analyze each of the other 29 U.S. patents, he explains why he disagrees with Dr. Lee's valuation of the '571 patent and he discusses features of the patent portfolio (such as the fact that all of the patents have only one of two versions

² McAlexander's opinion about the diminished value of the '571 patent as a result of the Court's supplemental claim construction, set forth in Paragraphs 380-381 of his rebuttal report, is the subject of MLC's pending second *Daubert* motion to exclude McAlexander's testimony.

³ Dr. Lee's testimony is the subject of a pending *Daubert* motion.

1 of a specification directed at multi-level cell memory and that the later of the two specifications –
2 which the ‘571 patent does not have – added some new matter). *See* McAlexander Rebuttal Report
3 ¶¶ 375-376. Accordingly, the Court DENIES MLC’s third *Daubert* motion to exclude
4 McAlexander’s testimony.

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6 **IT IS SO ORDERED.**

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8 Dated: July 2, 2019, 2019



SUSAN ILLSTON
United States District Judge